

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

NORTH CAROLINA STATE CONFERENCE) CASE NO. 1:13CV658
OF THE NAACP, et al.,)

Plaintiffs,

V.

PATRICK LLOYD MCCRORY, in his
Official capacity as Governor
Of North Carolina, et al.,

Defendants.

LEAGUE OF WOMEN VOTERS OF NORTH) CASE NO. 1:13CV660
CAROLINA, et al.,)

Plaintiffs,

V.

STATE OF NORTH CAROLINA, et al.,)

Defendants.

UNITED STATES OF AMERICA,) CASE NO. 1:13CV861

Plaintiff,

V.

STATE OF NORTH CAROLINA, et al.,) Winston-Salem, North Carolina
) July 29, 2015
Defendants.) 9:03 a.m.

Defendants.

TRANSCRIPT OF THE **TRIAL/DAY THIRTEEN**
BEFORE THE HONORABLE THOMAS D. SCHROEDER
UNITED STATES DISTRICT JUDGE

Proceedings recorded by mechanical stenotype reporter.
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P R O C E E D I N G S

THE COURT: Mr. Peters.

MR. PETERS: Good morning.

THE COURT: Good morning, everyone. Are we ready to proceed?

MR. PETERS: Yes, sir.

THE COURT: Ms. Strach, I remind you you are still under oath.

MR. PETERS: Thank you, Your Honor.

DIRECT EXAMINATION (Continued)

BY MR. PETERS

Q Good morning, Ms. Strach.

A Good morning.

Q Before we move on to a new topic, there are two or three things from yesterday that I just want to make sure are clear or follow up on a little bit. The first is you mentioned yesterday that all county boards of elections are made up of three members; is that correct?

A Correct.

Q How are those three members appointed?

A Those members are appointed by the State Board of Elections.

Q How are they nominated?

A They are nominated by the state parties. The Democrat Party and the Republican Party submit names to the State Board

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1 and then the Governor -- the party of the Governor will have
2 the majority of those members, of the two members, and then the
3 minority member -- all of those will be picked by State Board.

4 Q So of the three members, two will be members of the same
5 time political party as the Governor?

6 A Correct.

7 Q And the third member will be a member of another political
8 party, and typically it is going to be the other named
9 political party?

10 A That's correct.

11 Q And how about with the State Board of Elections, the five
12 members?

13 A The Governor appoints the five members of the State Board
14 of Elections, and that's based on recommendations from the two,
15 the Republican and Democrat Party.

16 Q How do the five members -- how does that work politically
17 in terms of affiliation?

18 A The same way. The majority of the board will be the
19 political party of the Governor. So three members will be of
20 the party of the Governor, two of the other party.

21 Q So when you were talking yesterday about -- for a county
22 board to request a reduction in hours for the early voting
23 period and matching the cumulative hours from the last
24 comparable election, I believe you said that that decision has
25 to be unanimous by the county board?

1 A Correct.

2 Q And it also has to be unanimous from the State Board?

3 A Correct.

4 Q Is it fair to say that both the county and the State
5 Board -- that that, in essence, means that the Republican
6 members of the board and the Democratic members of the board
7 have to agree?

8 A That's correct.

9 Q Now, we talked some yesterday about list maintenance and
10 mail verification. I just want to ask one or two follow-up on
11 that.

12 If a person fails mail verification and they fail before
13 their vote is counted, say if they registered toward the end of
14 the registration period or previously under same-day
15 registration and they fail before their vote is counted, if
16 they wish to vote at a later time, do they have to reregister?

17 A If they fail, their registration would be denied; and so,
18 yes, they would have to reregister.

19 Q If a person fails mail verification after voting, the next
20 time they come in to vote, do they have to reregister?

21 A No, they would just have to confirm their address.

22 Q With list maintenance, what happens if the confirmation
23 letter that you described yesterday doesn't come back to the
24 State Board or is returned undeliverable?

25 A During the list maintenance process, if the confirmation

1 mailing goes out and is not returned or is returned

2 undeliverable, that voter would become inactive.

3 Q If a person who was declared inactive for that reason or
4 noted as inactive in the registration list, if they showed up
5 at the polls in the subsequent election to vote, would they be
6 allowed to?

7 A They would, as long as they confirmed their address.

8 Q And as long as they're in the same county?

9 A As long as they're in the same county.

10 Q They would not have to reregister?

11 A They would not.

12 Q Thank you. Let me ask you to turn your attention to
13 same-day registration. And can you briefly describe what
14 same-day registration means?

15 A Same-day registration means that a person could present
16 themselves at an early voting location and register to vote and
17 cast a ballot at the same time.

18 Q And do you recall when same-day registration became
19 available in North Carolina?

20 A I think it first went in in 2007. The first general
21 election year was in 2008.

22 Q 2008. And VIVA discontinued the practice of same-day
23 registration in North Carolina; is that correct?

24 A Correct.

25 Q So same-day registration was not in place in the 2014

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1 election; is that correct?

2 A It was not.

3 Q All right. But has the State Board, based on the
4 preliminary injunction issued by the Court, essentially
5 reinstituted same-day registration for the upcoming municipal
6 elections?

7 A Yes.

8 **MR. PETERS:** May I approach, Your Honor?

9 **THE COURT:** Yes.

10 **BY MR. PETERS**

11 Q Ms. Strach, have you had a chance to look at this exhibit?

12 A I have.

13 Q Can you identify what it is?

14 A This is a report based on the 2012 election of mail
15 verification failure rates of same-day registration and
16 non-same-day registration voters.

17 Q All right. And let me -- I think this has been mentioned
18 before, but let me ask you to look at the date up at the top in
19 the header, May 2015. Do you know when this report was
20 actually published?

21 A I think it was finalized in June of 2015.

22 Q All right. Did you ask that this report be prepared?

23 A I did.

24 Q And who did you ask to prepare it?

25 A I asked Veronica Degraffenreid and Brian Neesby to both

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1 play a part in preparing this report.

2 Q And as a reminder, who is Veronica Degraffenreid?

3 A Veronica Degraffenreid is our elections support manager at
4 the State Board of Elections.

5 Q And is she the person who had prepared the 2013 report you
6 referred to a few minutes ago?

7 A Yes.

8 Q And who is Brian Neesby?

9 A Brian Neesby is a data analyst with the State Board of
10 Elections.

11 Q Why did you ask them to prepare this report?

12 A Back at the first -- in my first deposition, I was asked
13 questions about Veronica's 2012 report, which was a report that
14 looked at mail verification rates of non-SDR voters and -- or
15 non-SDR registrants and SDR voters, and it looked at the rates
16 that -- the people that registered in 2012, the rate at which
17 they failed mail verification.

18 The methodology that Ms. Degraffenreid used was -- she
19 looked at the status of that person in SEIMS, our statewide
20 voter registration system, to make a determination of whether
21 or not that voter had likely failed mail verification.

22 It did not look at whether or not people -- the non-SDR
23 registrants had voted. So when being asked questions about
24 that in my first deposition, it was -- I was being asked
25 questions about same-day registration. So I thought in order

1 to make sure that we dealt with the issues regarding same-day
2 registration, it was important to find the most accurate way of
3 determining whether someone had, in fact, failed mail
4 verification, rather than looking at a status that may or may
5 not be the reason why someone was in that particular status
6 because they had failed mail verification.

7 So Mr. Neesby, being our data analyst, was able to go back
8 and look at the verification log, which is a separate -- it's
9 something in SEIMS that allows him to look at each voter and
10 whether or not they actually failed mail verification without
11 looking at the status the voter was currently in. So it
12 actually looks at the mailings. So that's part of this report.

13 Also, with Ms. Degraffenreid, I wanted to make sure that
14 she included in her analysis whether or not people had voted,
15 because that is certainly significant when it comes to an
16 analysis of same-day registration of whether or not people
17 voted or whether just registered in 2012 that didn't vote.

18 Q And why did you think that was important to look at,
19 whether or not they had actually voted?

20 A Because that's sort of the central -- the concern about
21 same-day registration and mail verification is whether or not
22 someone that registered in the traditional registration period,
23 whether they could register and vote and fail mail
24 verification; whereas, during the same-day registration period,
25 people are registering and voting at the same time. So I think

1 it's important to compare apples to apples, and that seemed to
2 be a better comparison.

3 Q Okay. And what is your understanding of what the report
4 shows?

5 A What the report reflects is that people that registered in
6 2012 and voted, if they registered and voted during the
7 traditional time period, up to 25 days of the election, that
8 they failed mail verification at a lower rate than those that
9 voted -- registered and voted SDR, they failed mail
10 verification at a higher rate.

11 Q Did it tell you anything about comparison on votes being
12 counted, whether -- the rate at which people who registered
13 using SDR, whether their votes were counted compared to those
14 who registered in a more traditional way?

15 A Yes. Same-day registration applicants -- I think the
16 report actually shows that 96 percent of people that registered
17 during the same-day registration period, their votes counted
18 before they could complete the mail verification process. And
19 registrants -- traditional registrants, 96 percent of those
20 people -- I believe that's the correct figure, and I can verify
21 that -- are able to complete mail verification before they
22 vote.

23 Q Let me ask you to look at page 3 of this report. Do you
24 see the second chart, the one at the bottom of the page?

25 A Yes.

1 Q Let me ask you to look at the last line in that chart,
2 which reflects the registration period between October 18,
3 2012, and November 3, 2012.

4 A Yes, I see that.

5 Q Would those dates represent the time in 2012 that same-day
6 registration was available?

7 A It would.

8 Q And let me ask you to look under the column that says
9 "Total New Registrations, Voted."

10 A Yes.

11 Q And what is the number you see there?

12 A 96,529.

13 Q Do you recall being asked last week a question about what
14 the effect on those 96,529 people might have been had same-day
15 registration not been in effect?

16 A I do recall.

17 Q And what is your opinion on the effect on these 96,529
18 people?

19 A My opinion is that I don't believe that if the law was --
20 if there was not -- same-day registration was not in effect, I
21 don't believe that the 96,529 would have likely presented to
22 vote. I base it on the fact that I think that people that want
23 to vote want their vote to count, and that if people are
24 educated and realize that the law does not allow them to do
25 that, they will vote in a way which will allow their vote to

1 count.

2 Q So are you saying that if people are educated as to what
3 the law requires, is it your belief that they adjust their
4 behavior to meet the requirements of the law?

5 A That's exactly right.

6 Q Are you aware of what happened with regard to people
7 presenting to vote out of precinct -- excuse me, I am jumping
8 ahead -- people who presented to vote in 2014 who were not
9 registered --

10 A Yes.

11 Q -- during early voting?

12 A Yes.

13 Q And does that inform at all your opinion on the
14 96,000-plus people who would, you think, not have turned up to
15 vote during -- attempting to use early voting?

16 A It does. We looked at the number of people that presented
17 in 2010, a comparable election, and registered using same-day
18 registration. It was more than 20,000 people during the 2010
19 election that registered SDR.

20 In 2014, there were a little over 800 people that voted a
21 provisional ballot, and that ballot was not counted because
22 they were not registered. So that, to me, says that people
23 understood that you could not same-day register in 2014.

24 Q And I've been reminded that I failed to ask you, is this
25 exhibit Defendant's Exhibit Number 16 that you were looking at?

1 You can look at the blue sticker on the front.

2 A Yes, it is.

3 Q I failed to note that.

4 Do you know whether African-American registration has
5 declined since same-day registration was discontinued under
6 VIVA?

7 A No, I don't believe that it has.

8 Q And other than same-day registration, when it was
9 available, what other ways are there that a person can register
10 to vote?

11 A There are several ways that people can register to vote.
12 People can go to their local county board of elections and fill
13 out a voter registration form. People can go to our website or
14 their county board of elections website, which links to a voter
15 registration form, which they currently can print out and
16 submit to their county board of elections. They can register
17 to vote at the DMV. They can register to vote at public
18 libraries. There's registrations at high school, colleges,
19 public assistance agencies. There are many opportunities where
20 voter registration is offered.

21 Q When you say they can register to vote at high schools or
22 colleges, do you know whether high schools and colleges are
23 required to have registration forms available?

24 A They are.

25 Q Might another way someone can register be through voter

1 drives -- or registration drives?

2 A Absolutely.

3 Q Are you aware of testimony by Dr. Stewart that
4 approximately 11,000 people registered after the close of books
5 in 2014?

6 A Yes, I have been made aware of that.

7 Q Based on your experience as executive director of the
8 State Board, do you have an opinion regarding what the 11,000
9 figure might represent?

10 A I can't say specifically, but one thing I that -- a couple
11 of things is that I don't believe that they are as a result of
12 anything to do with same-day registration because that would
13 suggest that those people had to present at a polling place
14 during the early voting period and try to submit a voter
15 registration.

16 What I would also point out is that places like the DMV
17 and public assistance agencies and other places do not stop
18 offering voter registration because the books have closed. So
19 there are reasons why a registration form would be processed.
20 It may not be processed during the time that the books are
21 closed, but the date of that application could be used as the
22 process date, or the process date could be used, and all of
23 those factors could be -- registration forms that are coming in
24 by some other means, but not as a result of same-day
25 registration.

1 Q I believe you said this before, but when are the votes
2 that were cast by voters who registered using same-day
3 registration -- when are those votes counted?

4 A On Election Day.

5 Q And are those votes retrievable?

6 A The same-day registration?

7 Q Yes.

8 A Same-day registration ballots are retrievable because they
9 are absentee ballots, but the law doesn't allow for them to be
10 retrieved unless they are challenged.

11 Q And when does the challenge have to happen?

12 A Election Day.

13 Q And I want to make sure this is clear, too. You mentioned
14 earlier that same-day registration will be offered during the
15 municipal elections?

16 A It will be.

17 Q Because of the injunction?

18 A Yes.

19 Q How will same-day registration be administered? In other
20 words, is the SEIMS system set up to handle it, or will it be
21 by some other means?

22 A No, the SEIMS system -- it will not be run through the
23 SEIMS system. We set up a process that we actually have
24 piloted -- I wouldn't even call it pilot. We actually

25 implemented it in Pasquotank County, but we sent staff there to

1 **THE COURT:** -- how do you provide that information
2 for Election Day, and how would that be any different from
3 whatever you would be doing during early voting?

4 **THE WITNESS:** Well, what -- as a good example, with a
5 county that uses the electronic machine is they wouldn't be
6 able to use the electronic machine on out-of-precinct. On
7 Election Day -- in early voting sites, they don't use that
8 because you have to program the machine for the different
9 ballot styles. So if you have -- the -- usually the machine
10 can only handle a certain number of ballots styles.

11 So on Election Day, if you had -- if you were using
12 the electronic voting equipment in all the, say, 200 precincts,
13 you would have to have the ability to program every one of the
14 ballot styles of the county into that machine. Or if you
15 couldn't do that, you have to be able to vote on paper, a
16 provisional ballot or some other paper, in order to accommodate
17 that.

18 **THE COURT:** So during early voting, if you have early
19 voting at the board of elections, for example, and you are
20 using an electronic machine, does that machine have the
21 capability of being programmed for any ballot in the county?

22 **THE WITNESS:** Well, at least they would have multiple
23 machines to do that. Because it may be, if you have more
24 ballot styles than the machine can handle, you would have to
25 have different machines to do that. So if -- the early voting

1 sites or the county board, yes, you would have the ability to
2 do that.

3 **THE COURT:** Why would that not still be something you
4 could do on the same kind of electronic machine on Election Day
5 in each of the precincts?

6 **THE WITNESS:** You could do that. You would just have
7 to have multiple machines that were programmed and enough of
8 those to accommodate the amount of voters that would come, and
9 you would have to do that for every single precinct.

10 **THE COURT:** Okay. So if you are not using an
11 electronic but you're using paper ballots, how is that handled
12 during early voting for people who vote out of precinct?

13 **THE WITNESS:** Who go to the early sites? Right, you
14 have to have the ballot styles for every voter in the county at
15 these early voting sites. So if you have three sites, you
16 would have all the ballot styles in those three sites. If you
17 did that on Election Day, unless you went the provisional
18 ballot way, you would have to have the ballot styles for
19 every -- every voter in the county -- each precinct would have
20 to have the ballot style for that voter.

21 **THE COURT:** How many precincts are in a county?

22 **THE WITNESS:** It depends. Wake County comes to mind.
23 They have 200, but you have some smaller counties that have a
24 smaller number of precincts, and there may be even some
25 counties that have a larger number of precincts. So it varies

1 county by county; but, generally, your precincts are going to
2 be a lot higher than your early voting centers.

3 **THE COURT:** Then you also talked about the mail
4 verification process during early voting. I just want to make
5 sure I understand. If someone shows up for early voting, and
6 they have not completed the two-card process --

7 **THE WITNESS:** Yes, sir.

8 **THE COURT:** -- and they vote --

9 **THE WITNESS:** Yes, sir.

10 **THE COURT:** -- then under statute, what happens to
11 their vote?

12 **THE WITNESS:** It would count unless that voter was
13 challenged on Election Day. And if that voter is not
14 challenged on Election Day, that ballot would count.

15 **THE COURT:** What if the second card comes back before
16 they attempt to vote?

17 **THE WITNESS:** If the second --

18 **THE COURT:** I'm sorry. Somebody goes through the
19 normal registration and the second card comes back before they
20 attempt to vote during early voting or during the election.

21 **THE WITNESS:** If someone registers and both cards
22 come back before they vote, their registration is denied and
23 their ballot wouldn't count before they vote. They couldn't
24 vote.

25 **THE COURT:** All right. Is it possible for somebody

1 during same-day registration to have had an incomplete
2 registration, that is, that they showed up for same-day
3 registration during early voting, registered and voted? Is it
4 possible for that person to ever be declared incomplete in the
5 registration?

6 **THE WITNESS:** Usually it would be the job of the
7 precinct official, that they would have to have enough
8 information on that voter registration form to be able to
9 complete that process. So, generally, you wouldn't have
10 incomplete information at a same-day registration site because
11 they're standing in front of the registrant and obtaining that
12 information.

13 **THE COURT:** Okay. For someone who registers in the
14 traditional 25 days or before the election time frame, is it
15 possible for them to have incomplete registration?

16 **THE WITNESS:** Yes.

17 **THE COURT:** And if that person shows up to vote at
18 any time, what happens to them?

19 **THE WITNESS:** They would not be on the poll book
20 generally. If the incomplete information was required
21 information that didn't allow the Board of Elections to process
22 them, they wouldn't show up on the poll book, but they would be
23 afforded the ability to vote a provisional ballot; and if the
24 information they provide in the provisional ballot process is
25 enough to satisfy the requirements, their vote -- their ballot

1 would count.

2 **THE COURT:** Do you know what the law was in North
3 Carolina before House Bill 589 as to the order of candidates on
4 the ballot, how they were to be listed?

5 **THE WITNESS:** Yes, I think I do. It depends on what
6 type of election it is. If it is a primary, there is a random
7 order that the candidates' names would appear in. It's based
8 on a random order that the State Board sets. And then in the
9 general, I believe prior to 589, the Democratic candidate -- it
10 would be in order of parties so that the Democratic candidate
11 came first. I think that was changed with 589. And we still
12 have the random selection during primaries.

13 **THE COURT:** You say the Democratic candidate was
14 listed first under --

15 **THE WITNESS:** Right. I think it was based on
16 alphabetical of party. I believe that's how it was.

17 **THE COURT:** Was that by statute?

18 **THE WITNESS:** That was by statute.

19 **THE COURT:** Okay. Anybody have any questions in
20 light of my questions on those topics?

21 **MR. PETERS:** Just a very a little bit, Your Honor.

22 **THE COURT:** All right.

23 **BY MR. PETERS**

24 Q Ms. Strach, in response to some questions from the judge,
25 you referred to ballot styles.

1 A Yes.

2 Q What is a ballot style?

3 A A ballot style is actually the -- based on where you live,
4 you're only entitled to vote for certain races, and that is
5 your ballot style. That is the ballot that you are entitled to
6 vote, which may be different from someone else's ballot style
7 that lives in a different place and is entitled to vote for
8 different races.

9 Q So just as an example, if you and I lived across the
10 street from each other, but the line for House of
11 Representative districts went down the street so that I am in
12 one district and you are in a different district for the House
13 of Representatives, that would require two ballot styles, one
14 for you and one for me?

15 A Correct. Generally, in a precinct, there may be multiple
16 ballot styles.

17 Q Do you have a sense of how many ballot styles -- in a
18 general election when we are electing members of Congress and
19 members of the General Assembly, do you have a sense of how
20 many ballot styles there can be in a county?

21 A It can range in the range -- it depends on how counties
22 code their ballots. So you could have hundreds of ballot
23 styles. You could. You could have a few number of ballot
24 styles. It just depends on the number of races and basically
25 the size of the county and the size of the districts within